



Ethics News

Issue No. 43

Official Newsletter of the Indiana State Ethics Commission

July 2005

**In this Issue:**

- Gift Rule
- Enforcement Proceedings
- Advisory Opinions
- Staff Advice
- Class Schedule

Ethics Law Amended

(Gift Rule in Promulgation Process)

On May 11, 2005, Indiana Code 4-2-6 was amended to include the **following highlights**. (To view the statutes in their entirety, [click here](#).)

Post-Employment Restrictions, IC 4-2-6-11

- Life time ban on representing or assisting a person on a particular matter which was worked on as a state employee, even if no compensation is received.
- May not accept employment for one year after leaving state government with an employer over whom a regulatory or licensing decision was made.
- May not accept employment for one year after leaving state government if the employee engaged in the negotiation or the administration of one (1) or more contracts with that employer on behalf of the state or an agency

Moonlighting, IC 4-2-6-5.5.

- May not attempt to use the individual's official position to secure unwarranted privileges or exemptions that are:
 - (A) of substantial value; and
 - (B) not properly available to similarly situated individuals.
- Recusal may not be enough to avoid a conflict of interest.

Conflict of Interest, IC 4-2-6-9

A state officer, an employee, or a special state appointee may not participate in any decision or vote if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

- (1) The state officer, employee, or special state appointee.

(2) A member of the immediate family of the state officer, employee, or special state appointee.

(3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a trustee, a partner, or an employee.

(4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.

The Gift Rule [40 IAC 2-1-6](#)

A state employee or special state appointee, or the spouse or unemancipated child of a state employee or special state appointee, shall not knowingly solicit, accept, or receive any gift, favor, service, entertainment, food, or drink from a person who has a business relationship with the employee's agency or is seeking to influence an action by the employee in his or her official capacity.

These are two of the new exceptions to the gift ban::

- Mementos or souvenirs of nominal value.
- Nominal refreshments offered to a state employee conducting official state business while he or she is at a workplace of a person who has a business relationship or seeks to influence official action with the employee's agency.

Remember, these are only a few of the changes to the ethics law and rules. If you have any questions, contact your supervisor, your [Ethics Officer](#) or the [State Ethics Commission](#).

Education and Training Requirements

Under the new education rule [40 IAC 2-1-5.5](#), it is required for new employees to have ethics training within 6 weeks of their starting employment date. All employees must receive ethics refresher training every two years.

Do these requirements apply to special state appointees?

Even though special state appointees are now under the jurisdiction of the Ethics Commission, the education rule does not contain the term "special state appointee." Therefore the rule is interpreted as applying only to state employees, not special state appointees. However, it is strongly recommended that special state appointees take an ethics- education class. It is in their best interest to be aware of the rules that do govern them.

Recent Enforcement Proceedings

The State Ethics Commission approved the following reports on June 9, 2005.

Case 04-C-15

A former state employee was found in violation of 40 IAC 2-1-6 (the gift rule) for soliciting and accepting tickets to a Colts playoff game from a vendor who had a business relationship with her agency. Even though the former employee did not have decision-making authority at her state agency, the gift rule prohibits state employees from soliciting or accepting gifts favors, entertainment or services from a person who has a business relationship with their agency. In addition, the former employee violated 40 IAC 2-1-6 (a) when she accepted drinks and dinner provided by the above-mentioned vendor.

Case 04-C-16

An Indianapolis vendor violated 40 IAC 2-1-6(a) when it offered gifts (dinner and Colts tickets) to employees of a state agency with which it had a business relationship. The vendor's expense records revealed that a dinner was expensed in the amount of \$436.75. Employees from the state agency were present and benefited from the dinner. On a separate occasion the vendor expensed drinks at \$45.00 and dinner at \$1,636.80. Although ignorance of the ethics rules is no excuse, there is no evidence that the vendor knew it was violating 40 IAC 2-1-6 (a).

2005 Ethics Classes

Ethics Orientation

(10:00 - 11:00 a.m.)

All classes in Conference Center #14
August 23; October 18; December 5

Supervisors and Managers

(10:00 - 11:30 a.m.)

All classes in Conference Center #17
August 25; October 20; December 8

To register, call (317) 232-3850 or visit our
Web site at www.ethics.IN.gov

You also may take the training online at
<<http://www.in.gov/ethics/training/orientation/index.html>>.

**The law must be stable,
but it must not stand still.**



— Roscoe Pound,
Dean of the Harvard Law School
from 1916-1936

Advisory Opinions

No. 05-I-1 Post-Employment

Issued May 27, 2005

Background

A state employee has been employed as a Family Case Manager II with the FSSA since January 2, 2002. She works in the Shelby County Division of Family and Children. In early 2003, the employee investigated a family regarding sex abuse issues and subsequently made a referral to the Indianapolis Institute for Families for counseling and supportive services. The referral was completed in July 2003. The employee's last contact with Indianapolis Institute for Families was September 2003. At that time, the case was transferred to a different case manager.

Question

Can the state employee accept a post-employment position with the Indianapolis Institute for Families?

Findings

- (1) The relationship between Shelby County Department of Families and Children and the Indianapolis Institute for Families terminated over a year ago.
- (2) The State employee did not have or exercise any authority in negotiating the contract between the Shelby County Department of Family and Children and the Indianapolis Institute for Families.
- (3) The State employee did not administer the contract between Shelby County Division of Family and Children and the Indianapolis Institute for Families.

Relevant Law

[IC 4-2-6-11\(b\)](#) (As Amended by Public Law 222, Section 9)2

Conclusion

There is no violation of the post-employment rule in IC 4-2-6-11(b) for the state employee to accept employment with the Indianapolis Institute for Families after she terminates her employment with FSSA.

Staff Advice

This article briefly reviews questions recently addressed by the Ethics Commission staff. The advice is not intended as a comprehensive analysis of the issue raised. For more information on whether and how this information may apply in another situation, contact your [agency Ethics Officer](#) or the State Ethics Commission.

NOTE: *Please be advised that the opinions in these answers merely interpret and apply the State Ethics Commission's laws, regulations, and policies. The fact scenarios presented in these questions could possibly violate other agency laws, regulations, rules, or policies.*

Q. Can a state employee belong to a trade association that lobbies the Legislative Branch?

A. As long as the state employee is not the lobbyist for the trade association, the employee's membership is okay.

Q. In the [May 2005 issue of Ethics News](#), there was a question about whether state agencies are permitted to pay for continuing legal education and annual license fees for state attorneys. The answer was that this is permissible as long as the attorney is employed by the state in an attorney position. I have what I think is a related question: whether payment by the agency for annual membership in the Indiana State Bar Association (ISBA) would be treated the same?

A. As I understand your described situation, the ISBA membership fees for the lawyers at FSSA would NOT be "compensation for the performance" of their duties. As long as the membership is not a benefit "in return for services rendered", and is available to all attorneys in the agency as a condition of their employment, then it would appear to be more like a "fringe benefit". I would say as long as the State Board of Accounts approves this and the membership is available to all staff lawyers employed in legal positions within the agency as a matter of policy, it would be similar to the CLE/FEES type of situation and would not constitute an ethical violation.

Q. In 2006 can I work the polls as a precinct committee person?

A. There is no ethical problem with your working the polls as long as you are not scheduled to work that day. If so, you would have to take the time off as vacation or leave time. You cannot use state work hours for political activity, or any activity that is not your official duties.

Q. Our agency has a Sam's Club Business Membership for which we pay \$30.00 per year. Sam's Club offers the following for additional cardholders: "As a Business Member, you are eligible to purchase eight Add-On Memberships for \$30 each (plus tax in some places). Each Membership includes an additional card for another household member." In the past, employees of our agency could be a Sam's Club cardholder by writing a check for \$30 to our agency to cover their membership fees. **Individual employees have always paid sales tax at Sam's.** Is this a practice we can continue?

A. As long as the program offered by Sam's Club is offered to every business, and not just to the employees of your agency, and **as long as your agency does not have a "business relationship" with Sam's Club, there is no violation of an ethics rule.** I believe that such is the case. I am somewhat familiar with Sam's Club, and I think that the contract language allowing additional members to be added is normal contract language for all their business customers. Therefore, your employees are not receiving any benefit that is not available to the public. In addition, make sure you check with your agency to see if there is an internal policy regarding this situation.

Q. I attended a regional training session of a trade association to which my agency belongs. The registration fee for the one day session was paid by my agency.. While at the session, a 50-50 raffle was held to help raise funds for a charity organization. I purchased the raffle tickets using my own funds, and won the half pot of \$90.50 cash. Since I purchased the raffle ticket with my own funds, am I entitled to keep those winnings?

A. There is no violation of any ethics law in your situation. However, you need to check with your agency ethics officer about this issue. Your agency may have a policy that is stricter than the state law. You must abide by such policy if it exists.

Ask the Webmaster

How can I get advice?

[Click Here.](#)

How can I file a complaint?

[Click Here.](#)



How can I file a Financial Disclosure Statement?

[Click Here.](#)

How can I find my Ethics Officer?

[Click Here.](#)

How can I register for a class?

[Click Here.](#)

How can I take online ethics training?

[Click Here.](#)